

REMARKS

The Office Action of May 25, 2007 has been reviewed and the comments therein were carefully considered. Claims 1-54 are pending in this application. By this response, claims 1, 15 and 41 have been amended. The amendments are supported by the specification and claims as originally filed and no new subject matter has been added.

Rejections under 35 U.S.C. § 103(a)

Claims 1-9, 15, 20-35 and 41-49 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Aterno et al. (2,811,483) in view of Hansa et al. (6,472,004) in view of the admitted state of the prior art. The Applicants respectfully traverse the rejection. Independent claims 1, 15 and 41 have been amended to clarify that the oatmeal composition comprises “an evenly distributed mixture.” This amendment is supported at least by paragraph 29 of the specification as originally filed, which states that “[t]he order of addition of ingredients is not critical as long as the vitamin C component is adequately mixed to ensure even distribution through the product.” Claims 1, 15 and 41 have also been amended to specify that “the triple encapsulated vitamin C component is stable for at least twelve months in the oatmeal composition.” These amendments are supported at least by paragraph 35 of the specification as originally filed. Paragraph 35 discloses the following:

The results indicate that both the triple encapsulated ascorbic acid and the triple encapsulated sodium ascorbate did not suffer any significant degradation over a twelve month period while incorporated in the oatmeal product and exposed to normal storage conditions.

Aterno et al. is directed to beadlets of vitamins and nutrients with layers of sugar syrup and layers of plastic or resinous materials (Col. 2, lines 55-60 and 65-69). Aterno et al. discloses putting the beadlets on foods, but does not suggest evenly distributing the beadlets in a food. Further, Aterno et al. does not disclose adding beadlets to food that is going to be stored prior to consumption. Indeed, Aterno does not teach that the beadlets could remain stable for at least twelve months when stored within an oat composition, or even when stored alone. At best, Aterno et al. discloses in Example V that a blend of beadlets containing numerous vitamins and minerals “exhibited good stability upon aging at room temperature and at 37° C. for a period of two months.” (Col. 10, lines 42-44) Two months is substantially shorter than twelve months,

and there is no indication that the beadlets are shelf stable for longer than two months.

The Office Action rejection contends that “nothing is seen that breakfast cereal is not shelf stable and the encased beadlets are shelf stable, so the two together would have been shelf-stable.” The Applicants respectfully disagree. Paragraph 3 of the specification as filed teaches the following:

The storage environment contributes to the degrading of the vitamins, especially vitamin C. For example, atmospheric oxygen and moisture can cause degradation through the oxidative process. Furthermore, depending on the type of food used, naturally occurring chemicals or enzymes can further increase the rate of degradation. For example, the high moisture content, water activity and enzymes in oatmeal cause significant loss of the added vitamin C.

Therefore, beadlets that are shelf stable by themselves may not be shelf stable when stored mixed with a food such as oatmeal, which is also shelf stable by itself.

Hansa et al. does not remedy the deficiencies of Aterno et al. Hansa et al. is directed to an oat product with nutrients, for example vitamin C, coated on the oats with a fat-free binder (Col. 4, lines 12-30, col. 9, lines 40-66). The Office Action states on Page 3 that “Hansa et al. disclose an uncooked oat product coated with a nutrient coating, which can be vitamin C.” The Office Action rejection also contends, on Page 7, that the term mixture can encompass a coating because “[a] coating of vitamin C has to be mixed with the oats in order to coat it.” To clarify the mixture of independent claims 1, 15 and 41, each was amended to recite an evenly distributed mixture of an oatmeal component and a vitamin C component. This language excludes coating because a coating provides a distribution of elements that is not even. Rather, a single coated oat piece is surrounded by vitamin C compounds and a group of coated oat pieces comprises vitamin C compounds adjacent to many other vitamin C compounds but adjacent to only one oat piece. Even if one skilled in the art combined Hansa et al. with Aterno et al., the combination of the beadlets of Aterno et al. with the coated oat product of Hansa et al. would result in beadlets coated onto oats with a binder, not in a shelf-stable oat composition comprising a substantially evenly distributed mixture of an oat component and a vitamin C component as recited amended independent claims 1, 15 and 41.

The commercial availability of a material does not render its every use obvious, thus the mere availability of TEVC does not remedy the deficiencies of Aterno et al in view of Hansa et al. It would not have been obvious to mix triple encapsulated vitamin C with an oatmeal component, because none of Aterno et al., Hansa et al., nor the known existence of TEVC teach

or suggest providing a shelf-stable oatmeal composition comprising an evenly distributed mixture of an oatmeal component with a triple encapsulated vitamin C component. Even if one skilled in the art combined TEVC with Atero et al. or Hansa et al., the result would be TEVC added to a food prior to consumption or TEVC coated onto oats with a binder, respectively, not the shelf-stable oat composition mixture as claimed.

Consequently, none of Atero et al., Hansa et al. or the commercial availability of TEVC, either alone or in combination, teaches or suggests all of the features of amended claims 1, 15 or 41. Claims 2-9, 20-35 and 42-49 depend from claims 1, 15 and 41, respectively, and are patentable over Atero et al. in view of Hansa et al. and the state of the admitted prior art for the same reasons as claims 1, 15 and 41 and for the additional limitations recited therein.

Claims 10-14, 36-40 and 50-54 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the above references as applied to the above claims, and further in view of JP55045601 and Anderson (2,410,417). JP55045601 discloses that it was known to coat a drug with hardened oil and then ethyl cellulose. Similarly, Anderson discloses that it is known to incorporate vitamins A and E into hard fat before coating with ethyl cellulose. (Col. 7, lines 5-10, Col. 8, lines 1-40) Neither JP55045601 nor Anderson, either alone or in combination, discloses a shelf-stable oat composition mixture or remedies the deficiencies of Atero et al., Hansa et al. and the state of the admitted prior art with respect to amended claims 1, 15 or 41. Claims 10-14, 36-40 and 50-54 depend from claims 1, 15 and 41, respectively, and are patentable over Atero et al. in view of Hansa et al. and the state of the admitted prior art and further in view of JP55045601 and Anderson for the same reasons as claims 1, 15 and 41 and for the additional limitations recited therein.

Claims 16-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the above references as applied to the above claims, and further in view of Hansa et al. Claims 16-19 depend from claim 15, which has been discussed in detail with respect to Atero et al., Hansa et al. and the state of the admitted prior art. The addition of the features in claims 16-19, such as flavorings, binders, inclusion pieces, or all three, does not remedy the deficiencies of the references and claims 16-19 are therefore also patentable over Atero et al in view of Hansa et

al in view of the state of the admitted prior art. Accordingly, reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejections are respectfully requested.

CONCLUSION

All rejections having been addressed, applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. The Examiner is welcome to contact via telephone the undersigned should it be helpful to facilitate prosecution of the application.

Should there be any other fees due, the Commissioner is hereby authorized to charge any such fees or credit any overpayment of fees to Deposit Account No. 19-0733.

Respectfully submitted,

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